

**FACT SHEET**  
**Unauthorized Archaeological Excavation – Lake Whitney**  
**U.S. District Court Case, Western District of Texas, WACO Division**

**COURT DECISION / CURRENT STATUS.** On 2 March 2004, a jury at the U.S. District Court in Waco, Texas, convicted Mr. Edward A. Brown and Mr. Bobby L. Sullivan for unauthorized excavation of archaeological resources at Lake Whitney, Texas. The jury convicted both parties in less than one hour of deliberations. Sentencing under ARPA guidelines was set for 21 April 2004 at Ft. Hood Texas.

**CASE SPECIFICS.**

- (a) Violation - 16 U.S.C. 470 ee(a), Unauthorized Archaeological Excavation; and 36 C.F.R. 327.14(a) Destruction, Defacement or Alteration of Public Property.
- (b) Count One - On 6 September 2003, the defendants, Mr. Brown and Mr. Sullivan aided and abetted each other, did excavate an archaeological resource located on public lands and did so without a permit issued under Title 16.
- (c) Count Two - Mr. Brown and Mr. Sullivan did destroy public property by digging holes without permission of the District Commander in violation of Title 36.

**POSITIVE RESULTS.** The Fort Worth District, Lake Whitney, and Park Ranger Brady Dempsey have done a commendable job in preparing for this case and supporting the U.S. Attorney in obtaining a favorable decision for the U.S. Government. There has been a libelous smear campaign against the ranger, prosecutor, and the government in general on several internet treasure-hunter sites. All concerned maintained a professional approach in following this case through to completion. In addition, Ranger Brady Dempsey will receive an Award of Merit from the Texas Historical Commission (THC) for his work on the Fort Graham ARPA case. The presentation will take place 5 May 04 at the THC's Archeology Committee Meeting in Fort Worth, Texas.

**BACKGROUND (Park Ranger Dempsey's report, as furnished by the Fort Worth District).**

At approx 1600 on Sept 6, Ranger Dempsey located a vehicle, TX tag PH8JNH in the closed area of Old Fort Park. Lake level 523.66

Approximately 1625, the occupants of a small boat, LA 6221BH approached Ranger Dempsey from across the cove.

The two occupants were identified as Edward A Brown and Bobby L Sullivan. They informed Ranger Dempsey they were there for the sole purpose of treasure hunting on the old Fort Graham site and had done so on many occasions. They acknowledged some familiarity with the National Historic Preservation Act, the Archeological Resource

Protection Act, State Antiquities Code, and Corps of Engineers regulations. They also stated they had seen the clearly posted sign stating "No Vehicles Beyond This Point" but had forced their vehicle into the park around a pipe fence barrier.

At approximately 1700 hours, Mr. Brown and Mr. Sullivan were escorted to a gate by Hill County deputy Wollert and the gate was opened for them to leave the park.

Complete details of the incident are contained in Park Ranger Dempsey's written statement made on 7 Sept 03.

7 Sept 03, Rangers Dempsey and Spiller performed an internet search on Fort Graham and the East Texas Metal Detectors club. Ranger Dempsey drafted a detailed statement of the events of 6 Sept 03 and internet findings.

7 Sept 03, Ranger Dempsey provided the information about this incident to Lake Manager Ronald L Bruggman by e-mail. Mr. Bruggman forwarded the information to US Prosecutor Capt Michael Franks at Ft Hood TX for his review. Capt Franks felt the case was serious and warranted action and possible further investigation. Capt Franks indicated his intentions to void the citations issued by Ranger Dempsey and pursue changes. Capt Franks indicated that he had no staff available to investigate any other activities on Government Property that Mr. Brown's log book or GPS unit may have detailed.

10 Sept 03 Ranger Dempsey and Manager Bruggman discussed the archeological site damage with Ft Worth District Archeologist Dan McGregor. Scheduled Archeological site assessment. 2.73 inches of rain and lake level increase of 2 inches, covered almost all shoreline area that had holes.

16 Sept 03 The US Fish and Wildlife Service in Ft. Worth TX had assisted with archeological crimes at Corps of Engineers lakes in the past. Due to the jurisdiction they had in the public lands and waters, they determined the incident warranted further investigation and they contacted Capt. Franks.

22 Sept 03, Park Ranger Dempsey met with USF&W Special Agent Russell Carter in regards to Fort Graham archeological site damage. Provided Agent Carter with information and performed a site visit. Agent Carter stated he would review with his supervisor, Agent Steve Hamilton. USF&W agents made a second site visit several days later and determined that there was sufficient information to investigate Ft Graham site damage and other unauthorized archeological excavations that may have been detailed in a log book and/or GPS unit.

30 Sept 03. FT Worth District Archeologist Dan McGregor performed a site evaluation at Fort Graham.

1 Oct 03, Provided archeological assessment and associated costs, costs to repair vehicle damages, and ER 1130-2-540 to USF&W agents.

29 October 03, Received notification from Capt. Franks that the USF&W Special Agents seized Mr. Brown's truck and may be investigating other digs. Capt. Franks also stated how he would be charging Mr. Brown.

### **The Sentencing:**

21 Apr 04. Sentencing was this date at Fort Hood, Texas. The judge sustained the Defense's objection that there had not been sufficient proof of previous trips to demonstrate a pattern of misconduct. This lowered the sentencing range to category 8 as opposed to 10. This made the sentencing range very limited. The Federal Magistrate ordered no fines or jail time to offset the large amount of forfeiture.

Sentencing was as follows:

1. Both men were placed on 1 yr conditional probation.
2. All artifact collections that were admitted as coming from the site were donated to the Hill County Museum near the lake.
3. All equipment except the GPS unit and notebook were forfeited for a total of \$7,200. The 1994 GMC truck owned by Mr Brown is still being considered for forfeiture. A final determination will be made in 13 working days by Judge Mansky after a written brief from the Assistant US Attorney is prepared and the defense reviews it.
4. Restitution of \$113.60 was ordered to pay for the fencing where they entered the park.

Mr Brown and Sullivan also documented that they had spoken at a Council of Treasure Clubs Conference to representatives of 60 Relic Hunting groups and advised them that Corps of Engineers owned property should be treasure hunted only in accordance with Corps Policy and Regulations and they should stay off any area not designated for metal detectors.